Massachusetts Land Use Laws: A Few Ironies in the Fire

**Despite being a leader in many areas, Massachusetts is ranked by the American Planning Association as one of the states with the most outdated state land use laws.**

**• Approval Not Required (ANR)**: Easy approval of roadside building lots makes even dirt roads in the most remotes places just as attractive to develop as those in a town center – dumb growth!

**• Zoning Variances**: The state's variance eligibility criteria is so strict that many cities and towns grant almost no zoning variances to landowners while others ignore the statute and grant them willy-nilly subject to no standards.  There is no middle ground, and at both extremes it's a broken statute!

**• Vested Rights**:  Securing the rights to proceed with development under a building or special permit is extremely difficult, but almost effortless with a non-binding preliminary subdivision plan.  The paradox is that building and special permits are end-stage permits requiring significant investment by the applicant; whereas a preliminary subdivision plan is exactly that – preliminary!

**• Development Impact Fees**: Massachusetts is one of the few states where assessing a formal impact fee of a developer is not common practice. It’s no wonder cities and towns push back against development projects if they can’t recover some of the costs! Instead, discretionary special permits are required for many projects so that ad hoc, unpredictable mitigation conditions may be imposed.

**• Special Permits**:  A “conditional use” or “zoning” permit elsewhere in the U.S. is called a “special” permit in Massachusetts.  And they really are special here, requiring a super-majority vote to be approved and lasting no longer than two years.  Not surprising developers dread them!

**• Serial Permitting**:  By the time a development project has been through the sequential string of separate local permits from different boards the design may have changed to such a degree that the hapless applicant must resubmit a new or modified application to the original board!

**• Zoning Vote**: Despite widespread dissatisfaction with the local application of Massachusetts land use laws, any change in local zoning requires a super-majority vote of two-thirds, thereby entrenching the status quo!

**• Mixed Use**: The state-of-the-art in smart growth planning encourages the mixing of a variety of residential, commercial, and civic uses to create walkable neighborhoods where people can live, work, and shop without excessive dependence on the automobile. Yet, the Massachusetts Zoning Act requires a difficult special permit for any multi-family housing in a non-residential area!

**• Master Plans**: Massachusetts municipalities are required by statute to prepare extensive master plans, yet there is no required relationship between the plan and local land use regulations. The result is that only a minority of communities have a current master plan in place, and even if they do the plan is often at odds with the land use regulations!

**Senate Bill S. 122, An Act Promoting the Planning and Development of**

**Sustainable Communities, addresses each of these issues and much more, is supported by**

**dozens of planning, environmental, housing, and public health organizations,**

**and is sponsored by 59 representatives and senators.**